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In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-231

AMERICAN POLLUTION PREVENTION COMPANY, INC.,
Respondent,

vs.

NATIONAL ALFALFA DEHYDRATING AND MILLING COMPANY,
Petitioner.

PETITION FOR WRIT OF CERTIORARI TO THE MINNESOTA SUPREME COURT

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In the Supreme Court of the United States

OCTOBER TERM, 1975

No. .....

AMERICAN POLLUTION PREVENTION COMPANY, INC.,

Respondent,

vs.

NATIONAL ALFALFA DEHYDRATING AND MILLING COMPANY,

Petitioner.

PETITION FOR WRIT OF CERTIORARI TO THE MINNESOTA SUPREME COURT

Petitioner, National Alfalfa Dehydrating and Milling Company, prays that a Writ of Certiorari issue to review the judgment of the Minnesota Supreme Court entered in the above-entitled case on May 23, 1975.

OPINIONS BELOW

The Order of the State Trial Court is unreported and is printed in Appendix B hereto.

The Opinion of the Minnesota Supreme Court, printed in Appendix A hereto, is reported in 230 N.W.2d 63. It affirmed the State Trial Court's denial of Petitioner's motion to dismiss for want of personal jurisdiction.

JURISDICTION

The judgment of the Minnesota Supreme Court was entered May 23, 1975. Jurisdiction of this Court is invoked under 28 U.S.C. Section 1257(3).

QUESTIONS PRESENTED

The questions presented are:

(1) Whether the Minnesota corporate long-arm statute is applicable in view of the fact that payment under the contract is controlled by Nebraska law and such requires payment to be made in Nebraska, and

(2) Whether the assertion of *in personam* jurisdiction over the Petitioner, a foreign corporation, by the State of Minnesota, denies Petitioner's right to due process because the necessary "contacts" with the State of Minnesota do not exist.

CONSTITUTIONAL PROVISIONS

The constitutional provision involved is the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States, U.S.C.A., Const. Amend. XIV, Section 1, which provides as follows:

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any

law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The statutes involved are:

Minn. Stats. 303.13, subd. 1(3), which provides as follows:

Subdivision 1. A foreign corporation shall be subject to service of process, as follows:

(3) If a foreign corporation makes a contract with a resident of Minnesota to be performed in whole or in part by either party in Minnesota, or if such foreign corporation commits a tort in whole or in part in Minnesota against a resident of Minnesota, such acts shall be deemed to be doing business in Minnesota by the foreign corporation and shall be deemed equivalent to the appointment by the foreign corporation of the secretary of the state of Minnesota and his successors to be its true and lawful attorney upon whom may be served all lawful process in any actions or proceedings against the foreign corporation arising from or growing out of such contract or tort.

U.C.C. Section 2-310(a), Neb. Rev. Stats. (1971), which provides as follows:

Unless otherwise agreed

(a) payment is due at the time and place at which the buyer is to receive the goods even though the place of shipment is the place of delivery;

STATEMENT OF THE CASE

On January 4, 1974, Respondent, American Pollution Prevention Company, Inc. (APPCO) and Petitioner, National Alfalfa Dehydrating and Milling Company (National Alfalfa) entered into an Amended Purchase Agreement (Appendix C, A12-A18) for the purchase of 3,800 head of Oakie Feeder Steers by National Alfalfa. The Amended Purchase Agreement was executed in O'Neill, Nebraska (Appendix G) and it called for the shipment of cattle, from various locations in Nebraska and South Dakota, to National Alfalfa's feedlot in Nebraska. Upon APPCO's failure to deliver the cattle within the specified delivery dates, National Alfalfa rescinded the contract. Hence, APPCO brought this cause of action in Hennepin County, Minnesota for breach of contract (Appendix C). Jurisdiction in Minnesota was based on Minn. Stats., Section 303.13, subd. 1(3) which provides as follows:

> Subdivision 1. A foreign corporation shall be subject to service of process, as follows:
>
> (3) If a foreign corporation makes a contract with a resident of Minnesota to be performed in whole or in part by either party in Minnesota, or if such foreign corporation commits a tort in whole or in part in Minnesota against a resident of Minnesota, such acts shall be deemed to be doing business in Minnesota by the foreign corporation and shall be deemed equivalent to the appointment by the foreign corporation of the secretary of the state of Minnesota and his successors to be its true and lawful attorney upon whom may be served all lawful process in any actions or proceedings against the foreign corporation arising from or growing out of such contract or tort.

National Alfalfa denied the breach and counterclaimed for failure to deliver within the specified delivery dates (Appendix D), which Respondent denied (Appendix E).

Following an unsuccessful attempt to remove the cause of action to the Federal District Court of Minnesota, National Alfalfa moved to dismiss the cause of action on the ground that Minnesota lacked personal jurisdiction over it, a foreign corporation (Appendix F). On May 23, 1975, the Minnesota Supreme Court affirmed the trial court's denial (Appendix B) of such motion (Appendix A).

APPCO is a Delaware corporation having its principal place of business in Minnesota. National Alfalfa is a Delaware corporation having its principal place of business in Shawnee Mission, Kansas. National Alfalfa is not licensed to do business and has never maintained an agent for service of process in Minnesota. National Alfalfa has no office, mailing address, telephone listing, bank account, or employees who reside in Minnesota. Nor does it own, lease or possess any real or personal property in Minnesota.

The only evidence of contacts, which National Alfalfa has with Minnesota, is based upon an affidavit by A. P. McMaster, Vice President of APPCO (Appendix H). Although unsupported by any language in the Amended Purchase Agreement, McMaster's affidavit alleges that payment was to be made in Minnesota. Both the trial court and the Minnesota Supreme Court found that since payment was to be made in Minnesota, such satisfied the requirement under the Minnesota corporate long-arm statute. However, it now appears that the place of payment is controlled by Nebraska law and such requires payment be made in Nebraska, U.C.C. Section 2-310(a) Neb. Rev. Stats. (1971).

Based upon the erroneous statement that payment was to be made in Minnesota, the Minnesota Supreme Court went on to hold that Minnesota could assert *in personam* jurisdiction over National Alfalfa without violating the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States. The decision was based upon the fact that National Alfalfa had sufficient contacts with Minnesota. Other than the erroneous affidavit concerning payment and two discussions involving the general business relations between APPCO and National Alfalfa, all other contacts with Minnesota were based merely upon McMaster's information and belief and they are totally unrelated to the instant cause of action. These contacts involved the shipment of dehydrated alfalfa to certain firms in Minnesota, none of whom are a party to this action. Such contacts are totally unrelated to this cause of action which centers around an Amended Purchase Agreement (Appendix C, A12-A18). This agreement was executed in Nebraska (Appendix G), called for the shipment of cattle from various locations in Nebraska and South Dakota to Petitioner's feedlot in Nebraska, and was to be construed in accordance with Nebraska law—it was clearly a Nebraska transaction.

At present, trial of the instant cause of action on the merits is pending this Court's determination of whether Minnesota's assertion of *in personam* jurisdiction violates the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

REASONS FOR GRANTING THE WRIT

1. In determining whether a State has jurisdiction over a foreign corporation, the first step is to ask whether the limitations, under the State's long-arm statute, exclude the present suit, *Aftanase* v. *Economy Baler Company*, 343

F.2d 187 (8th Cir. 1965). In applying this analysis to the instant action, the Minnesota corporate long-arm statute requires that the contract be performed in whole or in part in Minnesota.

The only evidence of performance in Minnesota is the affidavit of A. P. McMaster which states that payment was to be made in Minnesota. However, since the Amended Purchase Agreement (Appendix C, A12-A18) is silent as to the place of payment, the law of Nebraska controls and it requires that payment be made in Nebraska at the place of delivery, U.C.C. Section 2-310(a) Neb. Rev. Stats. (1971). Hence, the instant facts do not come within the purview of the Minnesota corporate long-arm statute.

The decision was based on McMaster's affidavit which stated that payment was to be made in Minnesota. However, this affidavit is not controlling in view of the fact that the Nebraska Uniform Commercial Code specifically requires that payment be made in Nebraska, the place of delivery. There is no basis for applying the corporate long-arm statute because no part of the contract was to be performed in Minnesota. Moreover, Minnesota's assertion of *in personam* jurisdiction over National Alfalfa extends beyond due process limitations.

2. Although the concepts of *in personam* jurisdiction over a foreign corporation have evolved from the rigid rule of *Pennoyer* v. *Neff*, 95 U.S. 714 (1878), to the flexible standards of *International Shoe Co.* v. *State of Washington*, 326 U.S. 310 (1945), such evolution does not imply the demise of territorial limitations on the *in personam* jurisdiction of State courts. *Hanson* v. *Denckla*, 357 U.S. 235 (1958).

If a foreign corporation enters into a contract with a Minnesota resident and any portion of such contract is to

be performed by *either* party in Minnesota, such falls within the reach of Minnesota's corporate long-arm statute. It may be that Minnesota has attempted by this statute to thrust aside all jurisdictional barriers, but such an attempt badly offends the Federal Constitution, *cf. Mueller* v. *Steelcase, Inc.* 172 F. Supp. 416, 419 (D. Minn. 1959). If the breadth of this statute encompasses a contract made in another state which requires some *unilateral* performance in Minnesota, by a Minnesota resident, such encompassing jurisdictional power opposes the decisions of this court, *Hanson* v. *Denckla*, 357 U.S. 235 (1958).

3. The only Minnesota contacts from which the instant action arises are based upon McMaster's affidavit. There he stated that two meetings were held in Minnesota where the business relations of National Alfalfa and APPCO were discussed. He also stated that payment for the cattle was to be made in Minnesota, though such was unsupported by the Amended Purchase Agreement, and is in direct conflict with applicable Nebraska law.

Even if payment were to be made in Minnesota, the meager contacts of payment and preliminary meetings do not, within the confines of the Due Process Clause, allow Minnesota to assert personal jurisdiction over a foreign corporation where the contract was substantially made and to be performed in Nebraska. *Golden Belt Manufacturing Co.* v. *Janler Plastic Mold Corp.*, 281 F. Supp. 368 (M.D. N.C. 1967). In *Braasch* v. *Vail Associates, Inc.*, 370 F. Supp. 809 (N.D. Ill. 1973), the court stated that the mere payment of money, shipment of goods into, or advertising in a State would not confer personal jurisdiction on that State, *Id.* at 814.

The Supreme Court of Minnesota has held that where the only connection with Minnesota is the payment of

money in that State, such contact is less than the minimum contacts required by "traditional notions of fair play and substantial justice." *Fourth Northwestern National Bank of Minneapolis* v. *Hilson Industries, Inc.*, 264 Minn. 110, 117 N.W.2d 732 (1962); *accord Marshall Egg Transport Company* v. *Bender-Goodman Co., Inc.*, 275 Minn. 534, 148 N.W.2d 161 (1967). Even though these Minnesota decisions are not binding on the Federal question of due process, they are of weight, *Aftanase* v. *Economy Baler Company*, 343 F.2d 187 (8th Cir. 1965), and such decisions may further limit the extensions of a State's personal jurisdiction, see *Perkins* v. *Benguet Consolidated Mining Co.*, 342 U.S. 437, 440 (1952); *Aftanase* v. *Economy Baler Company*, 343 F.2d 187 (8th Cir. 1965).

The two business trips to Minnesota to discuss the business relations between National Alfalfa and APPCO fall far short of the confines of due process. *Tommills Brokerage Company* v. *Loeb, Rhoades & Company*, 411 F.2d 764 (7th Cir. 1969); *Amco Transworld, Inc.* v. *M/V Bambi*, 257 F. Supp. 215 (S.D. Tex. 1966).

The mere existence of a business relationship with a resident of the forum State does not automatically confer jurisdiction on that state, *Braasch* v. *Vail Associates, Inc.*, 370 F. Supp. 809 (N.D. Ill. 1973).

4. Regarding the question of due process, the Minnesota Supreme Court seemingly based its holding upon National Alfalfa's shipment of dehydrated alfalfa to various Minnesota firms. However, such contacts are unrelated to the instant cause of action.

In *Perkins* v. *Benguet Consolidated Mining Co.*, 342 U.S. 437 (1952) this Court held that the forum State may assert personal jurisdiction in a cause of action not arising out of the activities in the forum State where the ac-

tivities in the forum State involved the supervision of all wartime activities of the foreign corporation.

In *Ratliff* v. *Cooper Laboratories, Inc.*, 444 F.2d 745 (4th Cir.), *cert. denied*, 404 U.S. 948 (1971), it was stated that if the plaintiff's injury does not arise out of something done in the forum State, then other contacts between the corporation and state must be fairly extensive before the burden of defending a suit there may be imposed without offending "traditional notions of fair play and substantial justice."

Unlike the defendant in *Perkins* v. *Benguet Consolidated Mining Co., supra*, National Alfalfa does not supervise its entire operations from Minnesota. The casual Minnesota "contacts" involve the shipment of dehydrated alfalfa into Minnesota and such does not involve the systematic and continuous supervision of National Alfalfa's activities. National Alfalfa is not licensed to do business in Minnesota. It does not have a registered agent for service of process in Minnesota. National Alfalfa has no office, mailing address, telephone listing, bank account, or employees who reside in Minnesota. Nor does it own, lease or possess any real or personal property in Minnesota. Moreover, even though it has advertised in Minnesota publications, such does not subject it to Minnesota jurisdiction. *Benjamin* v. *Western Boat Building Corporation*, 472 F.2d 723 (5th Cir. 1973).

The case of *Fannin* v. *Chesapeake and Ohio Railway Company*, 204 F. Supp. 154 (W.D. Pa. 1962) involved a tort which occurred in Kentucky. It was held that the Federal District Court of Pennsylvania did not have personal jurisdiction over the defendant even though it carried on a continuous and effective program of solicitation in Pennsylvania. The fact that *Fannin* involves a tort as

opposed to a contract should be of little consequence, since a tort generally requires less contacts than a contract, *Thompson* v. *Kiekhaefer,* 372 F. Supp. 715 (D. Minn. 1973).

Significant in the instant action is the lack of a "rational nexus" between the forum State and the Amended Purchase Agreement. National Alfalfa's sales of dehydrated alfalfa to other Minnesota firms are at best a minimal contact with that State, are totally unrelated to APPCO's cause of action and do not provide a basis for the exercise of personal jurisdiction. *Washington Scientific Indus., Inc.* v. *Polan Indus., Inc.,* 302 F. Supp 1354, 1359 (D. Minn. 1969); *accord, Bowman* v. *Curt G. Joa, Inc.,* 361 F.2d 706 (4th Cir. 1966); *cf. Aftanase* v. *Economy Baler Company,* 343 F.2d 187 (8th Cir. 1965).

CONCLUSION

It is respectfully submitted that Minnesota lacks *in personam* jurisdiction over National Alfalfa. Since payment was to be made in Nebraska, U.C.C. Section 2-310(a) Neb. Rev. Stats. (1971), no part of the contract was to be performed in Minnesota. Hence, the instant action does not come within the purview of the Minnesota corporate long-arm statute.

Secondly, the assertion of *in personam* jurisdiction violates the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States. The shipment of dehydrated alfalfa to Minnesota firms by National Alfalfa is an activity which is totally unrelated to the present action and such does not measure up to the continuous and systematic activities of the defendant in *Perkins* v. *Benguet Consolidated Mining Co., supra.* The in-

stant action centers around a Nebraska transaction which involved the sale of cattle to be shipped to Petitioner's Nebraska feedlot from points in Nebraska and South Dakota. To allow the State of Minnesota to assert personal jurisdiction in this matter would not only offend the "traditional notions of fair play and substantial justice," but would herald the eventual demise of all restrictions on the personal jurisdiction of state courts.

Respectfully submitted,

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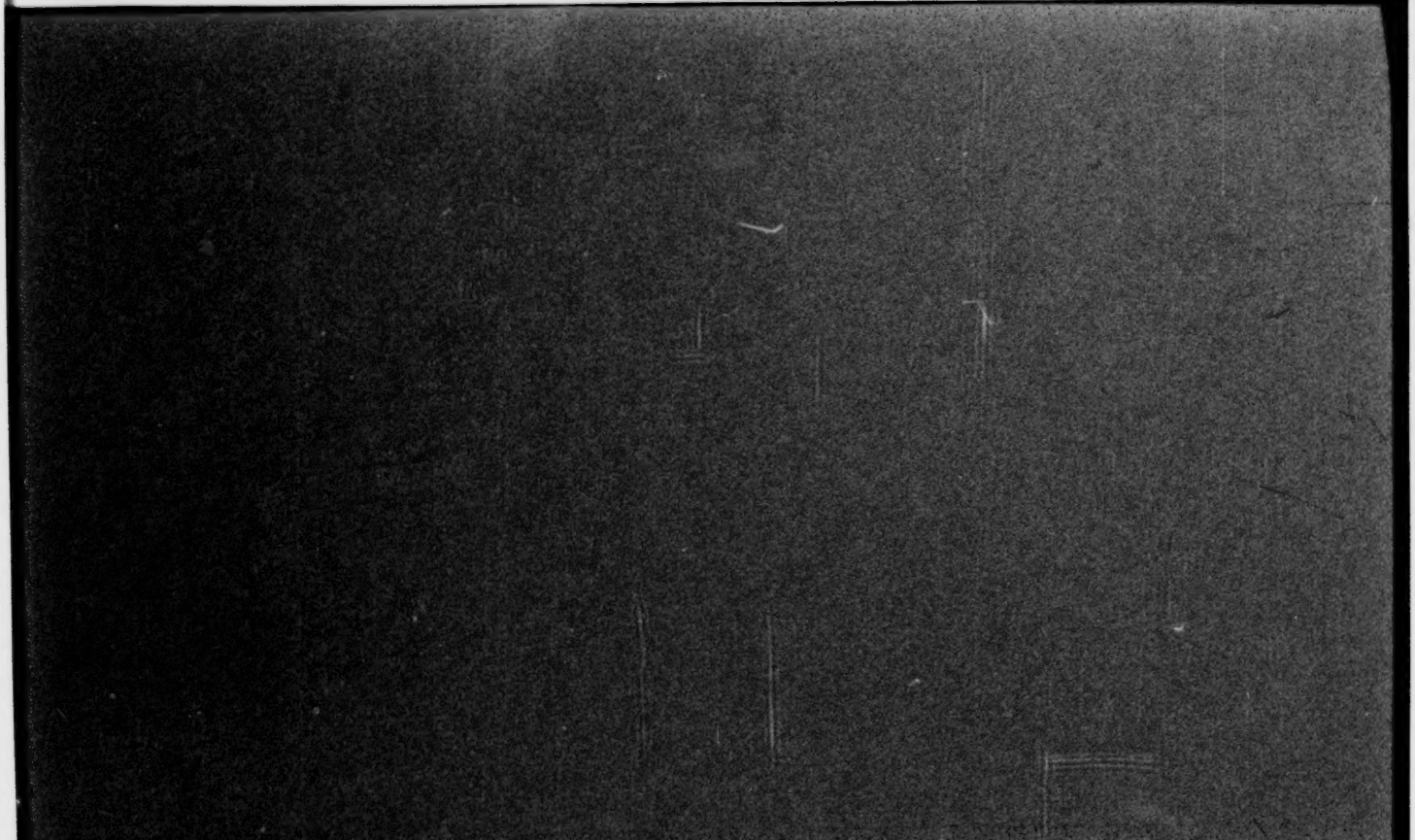

APPENDIX A

OPINION OF THE MINNESOTA SUPREME COURT

State of Minnesota
IN SUPREME COURT
No. 45263

American Pollution Prevention Company, Inc.,
Respondent,

vs.

National Alfalfa Dehydrating and Milling Company,
Appellant.

Endorsed

Filed May 23, 1975

John McCarthy, Clerk
Minnesota Supreme Court

SYLLABUS

Application of Minn. St. 303.13, our corporate long-arm statute, to plaintiff's action for breach of contract involving the sale of feeder cattle, in part to be performed in Minnesota, against defendant, a nonresident corporation, authorizes a court of this state to exercise personal jurisdiction over defendant where the record reviewed establishes sufficient minimum contacts with Minnesota to comply with constitutional due process requirements.

Affirmed.

Heard before Sheran, C. J., and Rogosheske and Yetka, JJ., and considered and decided by the court en banc.

OPINION

ROGOSHESKE, Justice.

Defendant, National Alfalfa Dehydrating and Milling Company, appeals from the denial of its motion to dismiss for lack of jurisdiction. Plaintiff, American Pollution Prevention Company, Inc., brought action in district court alleging that defendant breached a written contract for the purchase of feeder cattle. Defendant by its answer denied the alleged breach, challenged the jurisdiction of the Minnesota court, and counterclaimed, alleging breach of contract by plaintiff in failing to meet specified delivery dates. Following its unsuccessful attempt to remove the action to Federal court, defendant brought a motion to dismiss on the ground that Minnesota lacked personal jurisdiction over defendant, a nonresident corporation. The motion was denied and defendant appeals. We affirm.

We review the order based solely upon the evidence presented to the trial court, as we must. Plaintiff is a Delaware corporation, headquartered in Minneapolis. Defendant is also a Delaware corporation, headquartered in Kansas. On two occasions in 1973, discussions between the parties were carried on in Minneapolis concerning the possible sale of feeder cattle. Other telephone calls concerning the transaction were made in 1973 and 1974. On January 4, 1974, the parties entered into the purchase agreement which is the subject of this dispute. The written agreement, executed in Nebraska, contemplated the sale by plaintiff to defendant of 3,800 cattle for a total purchase price of approximately $1,600,000. The cattle were to be shipped to defendant's feedlot in Nebraska from locations in South Dakota and Nebraska within specified periods of time, and the exact price was to be determined by weighing operations conducted in Nebraska.

The agreement provides that it is to be construed according to Nebraska law. Although the agreement is silent as to the place of payment, the uncontradicted affidavit of plaintiff's vice president includes an assertion that payment was contemplated to be made in Minnesota. Payments on an earlier similar contract for the sale of cattle in August 1973 had been made by check mailed to plaintiff in Minneapolis. By the terms of the agreement, plaintiff is a "seller" and defendant is a "buyer." However, the counterclaim and its incorporated exhibit showing the basis therefor indicate that in previous agreements being superseded by the contract in dispute defendant was a seller of feed and services in fattening cattle rather than a buyer of such cattle. The affidavit of plaintiff's vice president, who is also an officer of I. S. Joseph Company, Inc., a Minnesota corporation, includes statements on information and belief that defendant's principal business relates to the sale of feed nationwide, and that approximately 10 percent of defendant's sales occur in Minnesota. The affidavit further shows that defendant in the past has sold directly to such Minnesota companies as International Milling, Ralston Purina, and Doughboy, and that defendant's representatives have frequently come to Minnesota to discuss business with buyers and with I. S. Joseph Company, which had for approximately 2 years handled substantially all marketing for defendant's exported products. The affidavit includes a copy of defendant's advertisement in a Minnesota trade publication offering dehydrated alfalfa for sale. While defendant challenges the relevance of this information, it does not challenge its factual accuracy.

The issue presented is the propriety of the trial court's exercise of jurisdiction over defendant under our corporate long-arm statute, Minn. St. 303.13, and constitu-

tional due process requirements. Section 303.13 provides in part:

> "Subdivision 1. A foreign corporation shall be subject to service of process, as follows:
>
> * * *
>
> (3) If a foreign corporation makes a contract with a resident of Minnesota to be performed in whole or in part by either party in Minnesota, or if such foreign corporation commits a tort in whole or in part in Minnesota against a resident of Minnesota, such acts shall be deemed to be doing business in Minnesota by the foreign corporation and shall be deemed equivalent to the appointment by the foreign corporation of the secretary of the state of Minnesota and his successors to be its true and lawful attorney upon whom may be served all lawful process in any actions or proceedings against the foreign corporation arising from or growing out of such contract or tort."

If, as the trial court determined and the parties on oral argument apparently conceded, all payments were to be made in Minnesota, then the contract was to be performed in part here and, as such, fell within the reach of the statute if there were sufficient minimum contacts with this jurisdiction to meet due process requirements. Decisions of this court have consistently found in § 303.13 a legislative intent to extend Minnesota's extraterritorial jurisdiction to the maximum limits permitted by due process. Hunt v. Nevada State Bank, 285 Minn. 77, 172 N. W. 2d 292 (1969), certiorari denied sub nom. Burke v. Hunt, 397 U. S. 1010, 90 S. Ct. 1239, 25 L. ed. 2d 423 (1970); Franklin Mfg. Co. v. Union Pacific R. Co., 297 Minn. 181, 210 N. W. 2d 227 (1973). If defendant's activities in Minnesota are extensive enough so that due

process requirements are satisfied, then the statute authorizes the exercise of personal jurisdiction.

Most of the cases cited by the parties are attempts to apply to widely varying situations the principles laid down in the well-known cases of International Shoe Co. v. Washington, 326 U. S. 310, 66 S. Ct. 154, 90 L. ed. 95 (1945); McGee v. International Life Ins. Co., 355 U. S. 220, 78 S. Ct. 199, 2 L. ed. 2d 223 (1957); and Hanson v. Denckla, 357 U. S. 235, 78 S. Ct. 1228, 2 L. ed. 2d 1283 (1958). As the parties acknowledge, the case of Aftanase v. Economy Baler Co., 343 F. 2d 187 (8 Cir. 1965), in its summary of the standards of those earlier cases, could justifiably control our decision. In Aftanase, the court, drawing together the principles enunciated in the United States Supreme Court cases, developed five guidelines for determining the constitutionality of the exercise of personal jurisdiction over nonresidents. This court has very recently recognized the utility and influence of the Aftanase guidelines in Northwestern Nat. Bank of St. Paul v. Kratt, ... Minn. ....., ..., 226 N. W. 2d 910, 913 (1975), where we summarized them as follows:

> "* * * (1) [Q]uantity of the contacts; (2) quality of the contacts; (3) connection between the cause of action and the contacts; (4) interest of the state in providing a forum for an injured resident; and (5) convenience of the parties."

In Aftanase, it was observed (343 F. 2d 197):

> "We also think it is fair to say that * * * Supreme Court cases establish only general and not precise guidelines. Perhaps they purposely do no more than this. We observe, however, that, at one time or another in the opinions, three primary factors, namely, the quantity of the contacts, the nature and quality

> of the contacts, and the source and connection of the cause of action with those contacts, are stressed, and that two others, interest of the forum state and convenience, receive mention."

Unlike the facts of Fourth N. W. Nat. Bank v. Hilson Industries, Inc. 264 Minn. 110, 117 N. W. 2d 732 (1962), principally relied on by defendant, in the case before us there has been a substantial and continuing quantity of general business contacts by defendant with Minnesota. Defendant has solicited business in this state through a trade paper advertisement; it has transacted business with a number of Minnesota corporations. Defendant conducts a national feed business, and it is virtually impossible to do so without Minnesota contacts. The affidavit of plaintiff's vice president, unopposed before the trial court, indicates a substantial and continuing business carried on by defendant in this state. The nature and quality of the contacts are also not without significance. Defendant appears to be a large corporation involved in agribusiness which, by frequent dealings in Minnesota, has taken advantage of the protection of Minnesota law and could reasonably anticipate that its activities would have economic as well as legal consequences in Minnesota. Furthermore, there is a connection between the underlying dispute and defendant's Minnesota contacts. Discussions of the transaction were conducted here, including telephone calls between the corporate headquarters. Payment for the cattle could reasonably be expected to be made in this state in the light of the prior dealings of the parties. The contract in dispute is one transaction among other business dealings between the parties. Finally, the dollar amount of the contract and its potential economic impact indicate a substantial Minnesota interest in protecting the rights of plaintiff, whose main officers are

here. The factor of convenience appears to have little significance either way. Presumably, wherever this case is tried, someone is going to have to travel and transport corporate records.

Applying the Aftanase guidelines, we hold that sufficient contacts have been shown to sustain the exercise of jurisdiction by a Minnesota court over defendant.

Affirmed.

APPENDIX B

(Title of Cause.)

ORDER

File No. 703261

This matter came duly on before the above Court at Special Term thereof on Wednesday, May 29, 1974, at 9:30 a.m. before the undersigned, one of the judges of this Court, on defendant's motion to delay discovery and on defendant's motion to dismiss for want of personal jurisdiction.

George P. Hoke appeared in support of the motions and Charles Quaintance of Maslon, Kaplan, Edelman, Borman, Brand & McNulty appeared in opposition to them. Upon all the files, records and proceedings herein, and upon arguments of counsel, the Court being duly advised in the premises, it is hereby

ORDERED that defendant's motion to delay discovery is granted from June 4, 1974, to June 12, 1974, at the same daily times and places as previously noticed herein and in the related federal court action bearing the same title and being File No. Civ. 4-74-228.

FURTHER ORDERED that defendant's motion to dismiss for want of personal jurisdiction be and the same hereby is denied.

Dated this 3rd day of June, 1974.

By the Court:

/s/ Edward J. Parker
District Judge

(Title of Cause.)

NOTICE OF FILING ORDER

File No. 703261

TO: NATIONAL ALFALFA DEHYDRATING AND MILLING COMPANY and GEORGE P. HOKE and HOKE & LARSON, Its Attorneys:

PLEASE TAKE NOTICE, that on the 4th day of June, 1974, the Court made and filed its order in the above case, a true and correct copy of which is hereto attached.

Dated at Minneapolis, Minnesota, this 14th day of June, 1974.

Maslon, Kaplan, Edelman, Borman, Brand & McNulty
By /s/ Charles Quaintance, Jr.
1800 Midwest Plaza
Minneapolis, Minnesota 55402
339-8015
Attorneys for Plaintiff

(Title of Cause.)

NOTICE OF APPEAL

File No. 703261

To: American Pollution Prevention Company, a Minnesota corporation, and to Charles Quaintance, Jr., and Messrs. Maslon, Kaplan, Edelman, Borman, Brand & McNulty, its attorneys.

PLEASE TAKE NOTICE that defendant, National Alfalfa Dehydrating and Milling Company, in accordance with Rule 103.01, and other applicable law, appeals to the Minnesota Supreme Court from the order of Judge Edward J. Parker herein dated June 3, 1974, refusing to dismiss the action for lack of personal jurisdiction of the parties.

June 26, 1974.

/s/ George P. Hoke
Attorney for Defendant
1100 Northwestern Bank Building
Minneapolis, Minnesota 55402
332/6331/2

State of Minnesota

ss.

County of Hennepin

Carol A. Fortner, being first duly sworn upon oath, deposes and says that on the 28th day of June, 1974, she served the above Notice of Appeal upon Charles Quaintance, Jr., plaintiff's attorney by enclosing copy thereof in an envelope, postage prepaid, and depositing same in the U. S. Mail to his proper office address.

/s/ Carol A. Fortner

Subscribed and sworn to before me this 28th day of June, 1974.

/s/ George P. Hoke
Notary Public
Hennepin County

APPENDIX C

STATE OF MINNESOTA — DISTRICT COURT
County of Hennepin — Fourth Judicial District

AMERICAN POLLUTION PREVENTION COMPANY, INC.,
Plaintiff,

vs.

NATIONAL ALFALFA DEHYDRATING AND MILLING COMPANY,
Defendant.

SUMMONS

THE STATE OF MINNESOTA TO THE ABOVE-NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED and required to serve upon plaintiff's attorney an answer to the complaint which is herewith served upon you, within twenty (20) days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by de-

fault will be taken against you for the relief demanded in the complaint.

Maslon, Kaplan, Edelman, Borman,
Brand & McNulty
By /s/ Charles Quaintance, Jr.
1800 Midwest Plaza
Minneapolis, Minnesota 55402
339-8015
Attorneys for Plaintiff

(Title of Cause.)

COMPLAINT

1. Plaintiff is a Delaware corporation, with its principal place of business in Minnesota.

2. Defendant is a Delaware corporation, with its principal place of business in Kansas, but does business in Minnesota within the meaning of the Minnesota Statutes conferring personal jurisdiction.

3. On or about January 4, 1974, defendant entered into an Amended Purchase Agreement in the form attached hereto as Exhibit A with plaintiff.

4. Despite and in violation of the terms of that Amended Purchase Agreement, defendant has failed and refused to purchase any of the cattle described therein.

5. As a result of defendant's failure and refusal, plaintiff has suffered damages in excess of $608,000.00.

WHEREFORE, plaintiff demands judgment against defendant in the amount of $608,000.00, together with in-

terest, costs and disbursements, and such other relief as the interests of justice may require.

Maslon, Kaplan, Edelman, Borman,
Brand & McNulty

By /s/ Charles Quaintance, Jr.

1800 Midwest Plaza
Minneapolis, Minnesota 55402
339-8015

Attorneys for Plaintiff

Exhibit A

AMENDED PURCHASE AGREEMENT

THIS AGREEMENT, EXECUTED in Atkinson, Nebraska, this 4th day of January, 1974, by and between AMERICAN POLLUTION PREVENTION COMPANY, INC., (hereinafter referred to as "Seller"), and P & P FARM SUPPLY, a division of NATIONAL ALFALFA DEHYDRATING AND MILLING COMPANY, (hereinafter referred to as "Buyer"),

WITNESSETH:

WHEREAS, the parties hereto have heretofore entered into agreements relating to the purchase and sale of certain cattle, and,

WHEREAS, the parties are desirous of restating, with respect to the executory part of those prior agreements, certain of the terms and conditions of such agreements, as set forth hereinafter, and,

WHEREAS, Seller is the owner of 2300 Okie Feeder Steers, more or less, presently located at Onida, South Dakota and Norfolk, Nebraska, and 1500 head of Okie

Feeder Steers, presently located at Norfolk, Nebraska, (hereinafter sometimes collectively referred to as the "Herd"), and is desirous of selling the Herd to Buyer, and Buyer is desirous of purchasing the Herd from Seller on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual agreements and undertakings set forth hereinafter, and notwithstanding the provisions of any earlier agreement, and upon the terms and conditions set forth below, the parties hereto agree as follows:

1. Seller shall sell to Buyer, 2300 Feeder Steers, more or less, grading at least 80% choice, said steers to be delivered, F.O.B., to Buyer's feedlot in Atkinson, Nebraska, delivery to commence on or about December 31, 1973, and to terminate on or about January 25, 1974. Buyer shall not be obligated to accept any animals weighing less than 650 pounds after shrink.

2. The purchase price to be paid by Buyer to Seller with respect to the Feeder Steers described in Paragraph 1, shall be $66.00 per hundredweight, off-truck-weight when shipped from Onida, and on-truck-weight less 3% when shipped from Norfolk, adjusted however as follows:

a. The aforesaid $66.00 per hundredweight is based upon average pay weight (APM 1/4/74 lc) of 650 pounds per animal.

b. The purchase price per hundredweight shall decrease by $.02 per pound of average weight per animal in excess of 650 pounds.

c. For every average pound less than the aforesaid 650-pound average per animal, the purchase price per hundredweight hereof shall increase $.02 per pound. (This adjustment being referred to in the industry as a $.02 slide, up or down).

3. The off-truck-weight referred to above shall be determined upon scales, the accuracy of which have been certified to by the State of Nebraska. Said Certification to be currently in effect.

4. Seller shall sell to Buyer, 1500 Okie Feeder Steers, more or less, grading at least 80% choice, said steers to be delivered to Buyer's feedlot in Atkinson, Nebraska, said delivery to be completed on or about March 4, 1974. Buyer shall not be obligated to accept any animals weighing less than 650 pounds.

5. The purchase price to be paid by Buyer to Seller with respect to the Okie Feeder Steers described in Paragraph 4 hereof, shall be $69.00 per hundredweight, based on weight at the time of loading said steers at Norfolk, Nebraska, adjusted, however, as follows:

a. The aforesaid $69.00 per hundredweight is based upon average pay weight (APM 1/4/74 lc) of 650 pounds per animal.

b. The purchase price per hundredweight shall decrease by $.02 per pound of average weight per animal in excess of 650 pounds.

c. For every average pound less than the aforesaid (650-pound average weight per animal, the purchase price per hundredweight shall increase $.02 per pound. (This adjustment being referred to in the industry as a $.02 slide, up or down).

d. The computed total purchase weight shall be decreased by 3% for shrink allowance to Buyer.

6. With respect to the portion of the Herd described in paragraph 1 above, Seller shall invoice Buyer per Buyer's scale weight tickets and subject to the contingency hereinafter stated, Buyer agrees to pay said invoice on or

before January 25, 1974. With respect to that portion of the Herd described in Paragraph 4, Seller shall invoice Buyer per the Fore Quarters Feed Lot, Norfolk, Nebraska, scale weight tickets. Subject to the contingency hereinafter stated, Buyer agrees to pay said invoice upon receipt thereof. In the event that any of the payments due the Seller are not paid when due, the same shall draw interest at the rate of nine per centum per annum from due date until paid.

In the event that Buyer has been unable to sell or resell any portion of either of the lots of cattle herein to a Feeder or Investor for the purpose of feeding the same to market weights, prior to the due dates for payment by Buyer to Seller, the Buyer shall have the right to postpone the payments due to Seller, in which event the Buyer shall place said lots of cattle on feed for its own account, and shall furnish all the feed and care at its own expense to grow said cattle to market weights as fat cattle and thereafter cause the same to be marketed in the joint names of Seller and Buyer. The proceeds of the sale of such cattle shall be first applied to the payment of any sums of money due to Seller from Buyer under this agreement, and any surplus thereafter shall be paid to Buyer. In the event the proceeds of the sale of such cattle are not sufficient to pay in full the amounts due to Seller from Buyer hereunder, Buyer shall immediately pay to Seller the amount of any balance remaining due and unpaid.

With regard to any lots of cattle for which payment has been postponed, Buyer shall have the right to pay for same or any portion thereof at any time, and to receive title to such parts as are paid for.

7. The parties hereto expressly agree that until such time as payment of the appropriate invoice has been made

in full, by Buyer, title to the Herd or any part thereof, which are the subject of any unpaid invoice, remains entirely with Seller and Seller shall have no obligation to present any bill of sale, brand release, or other document evidencing a transfer of title to the Herd, or the appropriate part thereof, until such payment has been received by Seller.

8. Buyer agrees that so long as any amount of any invoice, including interest thereon, if any, shall remain unpaid, Buyer shall agree to allow any field warehousing company, of Seller's choosing, to come upon Buyer's feedlots for the purpose of inspecting the Herd and issuing appropriate warehouse receipts thereon. Buyer shall use its best efforts and shall give its fullest cooperation to such warehousing company to assist them in the conduct of their employment. All costs and expenses to be paid to said field warehousing company shall be solely the obligation of the Seller herein.

9. If payment to Seller is postponed by Buyer, Buyer agrees that Buyer shall feed the Herd, commencing on delivery at its feedlot in accordance with the highest standards generally applied throughout the industry for finishing the Herd to slaughter weight, taking into consideration the type and weight make-up of the Herd. This obligation shall be solely at Buyer's expense. Buyer agrees that no lien, whether statutory or otherwise, shall be placed upon the Herd as a result of its obligations hereunder. Buyer further agrees to indemnify and hold Seller harmless against any loss, cost, or expense whatsoever, on account of any such lien.

10. Seller and Buyer agree that delivery of the 2300 cattle as referred to in Item 1, page 1, will be in accordance with the State of Nebraska Department of Agricul-

ture letter dated December 21, 1973 (copy of said attached hereto). Delivery of the 1500 cattle referred to in Item 4, page 1, will meet all conditions of the State of Nebraska Department of Agriculture prior to shipment. Clearance for shipment will be covered by a letter from said agency and will not adversely affect status of the present quarantine at P&P in Atkinson, and should P&P not be under quarantine, such delivery would not cause P&P to be placed back into quarantine.

11. Buyer shall be notified in advance of time of loading of any cattle identified to this agreement through the yards of facilities at Norfolk, Nebraska, and shall have the right to have a representative present to inspect said cattle and who shall have the right to reject any cattle not meeting the standards of this agreement or any obviously unhealthy cattle.

12. Buyer has previously purchased and paid for lots of cattle from Seller, other than the cattle described in this agreement, and has given Seller promissory notes, security agreements, and financing statements covering such purchases. Seller agrees to immediately return to Buyer such paid and cancelled promissory notes and security agreements and releases of such financing statements. Buyer may withhold payments due to Seller hereunder until such documents are furnished.

13. Nothing in this agreement contained shall be deemed or construed to place Buyer and Seller in the relationship of partners and at all times, their relationship shall be that of Buyer and Seller only.

14. This agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

15. This agreement shall be construed according to the laws of Nebraska.

IN WITNESS WHEREOF, the parties have hereunto set their hands as of the day and year first above written.

American Pollution Prevention Company, Inc.
By /s/ A. P. McMaster
Its Vice President

P & P Farm Supply, a Division of National Alfalfa Dehydrating and Milling Company
By /s/ Lowell Creach
Its Vice Pres.

STATE OF NEBRASKA
DEPARTMENT OF AGRICULTURE

December 21, 1973

Mr. Lowell Creach
P&P Feedlot
P.O. Box 86
Atkinson, Nebraska 68713

Dear Mr. Creach:

This letter is in regard to our telephone conversation on December 21, 1973.

After consulting with Mr. Glen Kreuscher, Nebraska Director of Agriculture and Mr. Robert Ensz, Attorney for Nebraska Department of Agriculture, the decision was reached with Mr. Kruescher and Mr. Ensz in agreement, that cattle could move from Fore-Quarters Feedlot at Norfolk to the P&P West Feedlot at Atkinson with the

following stipulations required to meet quarantine requirements:

All cattle in question are to be dipped in an approved dip under regulatory supervision. After the initial dipping, they are to be held in strict isolation from other cattle 10 to 14 days and receive the second supervised dipping at the end of this time. The first dipping is to be completed at the Fore-Quarters facilities and the second dipping may be at Fore-Quarters or at P&P yards. By following this procedure, there will be no violation of the quarantines now in effect at either of the aforementioned premises.

Please inform this office previous to the time of dipping so the necessary supervision can be given to charging the vat, etc.

Sincerely,

Nebraska Bureau of Animal Industry
Burrell D. Spahr, DVM
Ass't. State Veterinarian

BDS:fs

cc: Clark Collins
Dr. R. Dougherty
Ron Krutzinger
Glenn Kruescher

STATE OF MINNESOTA

Department of State

I hereby certify that the within service of process was filed in this office on the 15th day of April, 1974 at 1:00 o'clock P.M. and a copy thereof forwarded by registered mail to National Alfalfa Dehydrating and Milling Com-

pany, P. O. Box 500, Shawnee Mission, Kansas 66201, pursuant to Section 303.13 Subd. 1(3) Minnesota Statutes.

By /s/ Arlen I. Erdahl
Secretary of State

APPENDIX D

(Title of Cause.)

ANSWER AND COUNTERCLAIM

File No. 703261

Comes now the defendant above named for its Answer and Counterclaim states as follows:

ANSWER

1) The defendant admits the allegations of paragraph 1. and 3. of plaintiff's Complaint.

2) Defendant denies the allegations of paragraphs 2., 4. and 5. of plaintiff's Complaint.

3) As a further answer the defendant states that it is not subject to the jurisdiction of the Courts in Minnesota for the reason that the defendant does not do business in Minnesota and has been served with process and under the Minnesota "long arm" statute on a cause of action based upon a contract to be governed by Nebraska law, to be performed in Nebraska, executed in Nebraska, and if there was a breach, gave rise to the cause of action in Nebraska.

4) As a further Answer defendant alleges that the agreement specifically provided for delivery of the first 2,300 steers by January 25, 1974, but that plaintiff breached said agreement by failing and refusing to deliver any of said cattle within the said time specified in the agreement which constituted a material breach authorizing defendant to rescind the agreement.

COUNTERCLAIM

For its Counterclaim against the plaintiff defendant states as follows:

1) Plaintiff is indebted to the defendant in the sum of Nine Thousand Six Hundred Ninety Dollars and Six Cents ($9,690.06) in accordance with its contracts as set forth in Exhibit A attached hereto.

WHEREFORE the defendant prays for judgment against the plaintiff in the sum of Nine Thousand Six Hundred Ninety Dollars and Six Cents ($9,690.06), together with its costs and disbursements herein.
June 11, 1974.

/s/ George P. Hoke
Attorney for National Alfalfa Dehydrating and Milling Company
1100 Northwestern Bank Building
Minneapolis, Minnesota 55402
332-6331/2

AFFIDAVIT OF SERVICE BY MAIL

STATE OF MINNESOTA

ss.

COUNTY OF HENNEPIN

Carol A. Fortner of the City of Minneapolis, County of Hennepin in the State of Minnesota, being duly sworn, says that on the 11th day of June, 1974, she served the annexed Answer and Counterclaim on Charles Quaintance, Jr. the attorney(s) for American Pollution Prevention Company, Inc. the plaintiff in this action, by mailing to him a copy thereof, inclosed in an envelope, postage prepaid, and by depositing same in the post office at Minneapolis, Minnesota directed to said attorney(s) at 1800 Midwest Federal Plaza the last known address of said attorney(s).

/s/ Carol A. Fortner

Subscribed and sworn to before me, this 11th day of June, 1974.

George P. Hoke
Notary Public
Hennepin County, Minnesota

My Commission Expires Mar. 1, 1981.

Exhibit A

Combined close-out on following lots:		
34655, 34659, 34663, 34669, 34673, 34675 and 34683		$118,053.50
Payment on account April, 1973, recorded by P & P's sales ticket #49561		(90,000.00)
Interest due on note 574346.51 x 7% x 55 days		(7,897.26)
237840.60		
317842.15		
555582.75 x 7% x 68 days		(9,446.61)
Complete payment on note: amount withheld due to different concept on pay weight		(1,046.23)
Over payment made on check #10499 paid 547716 x 47.48 = $260,082.21		
should be	$260,055.55	26.66
Amount due National Farm Products		$9,690.06

APPENDIX E

(Title of Cause.)

REPLY TO COUNTERCLAIM

File No. 703261

Plaintiff replies to defendant's counterclaim and states:

Plaintiff is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of defendant's counterclaim.

WHEREFORE, plaintiff prays for judgment dismissing defendant's counterclaim with prejudice and granting plaintiff judgment as requested in its complaint.

DATED: June 25, 1974.

Maslon, Kaplan, Edelman, Borman,
Brand & McNulty

By /s/ Charles Quaintance, Jr.
1800 Midwest Plaza
Minneapolis, Minnesota 55402
(612) 339-8015
Attorneys for Plaintiff

APPENDIX F

(Title of Cause.)

MOTION

File No. 703-261

Comes now defendant, National Alfalfa Dehydrating and Milling Company, who respectfully moves the court to dismiss the action on the grounds that the Minnesota court lacks jurisdiction of the parties for the reasons set forth in the affidavit of George P. Hoke attached hereto.

Said motion will be made upon the attached affidavit, and all files, records and proceedings herein.

Dated May 23, 1974.

/s/ George P. Hoke
Attorney for National Alfalfa Dehydrating and Milling Company
1100 Northwestern Bank Building
Minneapolis, Minnesota 55402
332-6331/2

NOTICE OF MOTION

TO: American Pollution Prevention Company, Inc., and Messrs. Maslon, Kaplan, Edelman, Borman, Brand & McNulty, its attorneys.

PLEASE TAKE NOTICE that defendant, National Alfalfa Dehydrating and Milling Company, will bring the above motion on for hearing in the above court at Special

Term thereof in the Court House on Wednesday, the 29th day of May, at 9:30 a.m. on said day.

Dated May 23, 1974.

/s/ George P. Hoke
Attorney for National Alfalfa Dehydrating and Milling Company
1100 Northwestern Bank Building
Minneapolis, Minnesota 55402
332-6331/2

AFFIDAVIT OF SERVICE BY MAIL

STATE OF MINNESOTA

ss.

COUNTY OF HENNEPIN

Carol A. Fortner of the City of Minneapolis, County of Hennepin in the State of Minnesota, being duly sworn, says that on the 23rd day of May, 1974, she served the annexed Affidavit, Motion & Notice of Motion on Charles Quaintance, Jr. the attorney(s) for American Pollution Prevention Company, Inc. the plaintiff in this action, by mailing to him a copy thereof, inclosed in an envelope, postage prepaid, and by depositing same in the post office at Minneapolis, Minnesota directed to said attorney(s) at 1800 Midwest Plaza Building the last known address of said attorney(s).

/s/ Carol A. Fortner

Subscribed and sworn to before me, this 23rd day of May, 1974.

/s/ George P. Hoke
Notary Public
Henn. County, Minnesota

My Commission Expires March 1, 1981.

APPENDIX G

(Title of Cause.)

AFFIDAVIT

FILE NO. 703-261

State of Minnesota

ss.

County of Hennepin

George P. Hoke, being duly sworn, states that he is a duly admitted and practicing attorney with offices at 1100 Northwestern Bank Building, Minneapolis, Minnesota 55402, and that he is serving as defense counsel in this matter in the State of Minnesota.

That the so-called "AMENDED PURCHASE AGREEMENT" dated January 4, 1974, attached as Exhibit "A" to plaintiff's complaint was executed in Nebraska per attached Affidavit of Albert Thomson, its Secretary.

That by its terms, Article 15 thereof, it was to be governed by Nebraska law.

That upon information and belief the entire contract was to be performed in Nebraska.

That the breach, if there was one, occurred in Nebraska.

/s/ George P. Hoke

Subscribed and sworn to before me this 23rd day of May, 1974.

/s/ Carol Ann Fortner
Notary Public
Hennepin County, Minn.

My Commission Expires June 20, 1976.

EXHIBIT "A"

STATE OF MISSOURI

ss.

COUNTY OF JACKSON

Albert Thomson, upon being duly sworn, states that he is general counsel and secretary of the defendant, National Alfalfa Dehydrating & Milling Co., and that upon information and belief, the Amended Purchase Agreement attached as Exhibit A to the Complaint filed by American Pollution Prevention Company, Inc., was executed in the State of Nebraska.

/s/ Albert Thomson

Subscribed and sworn to before me this 8th day of May, 1974.

/s/ David L. George
Notary Public

My Commission Expires 1-17-76

APPENDIX H

(Title of Cause.)

AFFIDAVIT

File No. 703261

State of Minnesota

SS.

County of Hennepin

A. P. McMaster, being duly sworn, states:

1. I am vice president of American Pollution Prevention Company, Inc. (APPCO). I actively participated in the negotiations that underlie the contract described in our complaint in the above-entitled action.

2. APPCO's headquarters are here in Minneapolis. It has always been a Minneapolis-based company, a fact well known to the officials of National Alfalfa Dehydrating and Milling Company (National Alfalfa) with whom we were doing business. Officials of National Alfalfa came to Minneapolis to discuss both the transaction underlying this litigation and other business relationships on two occasions in 1973. In addition, numerous telephone conversations relating to the sale of cattle by APPCO to National Alfalfa occurred both in 1973 and in 1974; almost all of them involved telephone conversations between Minnesota and Nebraska.

A part of the same transaction that underlies this litigation was the sale of cattle in August to National Alfalfa. National Alfalfa paid APPCO by a series of checks, each of them sent to us in Minnesota. The payments con-

templated by the contract in question in this case were to be made in Minnesota.

3. National Alfalfa has had close ties to the state of Minnesota for at least five years. On information and belief, I believe that approximately ten percent of National Alfalfa's sales occur in Minnesota.

4. Approximately five years ago, Sam Tuttas, who was then president of National Alfalfa, discussed with I. S. Joseph Company, Inc. (I. S. Joseph), a Minnesota corporation, the possibility of I. S. Joseph handling with marketing for National Alfalfa. APPCO's offices are located within the corporate headquarters for I. S. Joseph. I am also an officer of I. S. Joseph and in that capacity have had numerous, repeated business contacts with officials of National Alfalfa. For approximately two years, we did handle all marketing on their exported products. We have provided advice to National Alfalfa on marketing over the years.

5. National Alfalfa has had plants in Gayville, South Dakota and in Fargo, North Dakota. They have shipped from those plants into Minnesota. They have sold directly to such companies as International Milling in Minnesota, Ralston Purina in Minnesota, Doughboy at its Minneapolis office, and several other Minnesota concerns.

6. National Alfalfa and I. S. Joseph jointly, together with another company, set up a corporation jointly to handle export matters, pursuant to the Webb-Pomerene Act. The purpose of that Act is to permit American corporations to join together for the purpose of handling together such matters as pricing. This joint effort was active for approximately 18 months. In connection with it, there were meetings in Minnesota, as well as in other states.

7. Over the last five years, various officials of National Alfalfa have come to Minnesota frequently and have discussed substantial business transactions here in Minnesota, both with I. S. Joseph and other major companies in the feed and grain business. With the exception of its P & P Farm Division, the principal business of National Alfalfa relates to the feed business. From my experience in the feed business, it is virtually impossible to conduct a national feed business without having substantial Minnesota contacts.

8. I am attaching to this affidavit a copy of an advertisement placed by National Alfalfa in the Minneapolis publication, *Feed Stuffs,* National Alfalfa advertises in this and other Minneapolis publications, which received widespread distribution both within Minnesota and elsewhere.

/s/ A. P. McMaster

Subscribed and sworn to before me this 28th day of May, 1974.

/s/ Edward H. Boyle
Notary Public
Hennepin County, Minn.

My Commission Expires Feb. 28, 1978.

(Notarial Seal)

PAGES BOUND VERTICALLY

FIRST STEP TO SMART DEHY BUYING

GET THE NATIONAL HABIT!

The first step to effective buying of dehydrated alfalfa is to concentrate on a dependable source of supply. That's where we come in . . .

NATIONAL has a long record of faithful service to the feed industry . . . and will continue to supply the know-how, facilities and organization to accomplish the job . . . which is to harvest and preserve for you all of the exceptional nutritional merits of dehy and get it to you as you want it, when you want it and where you want it.

That has been our guiding principle for more than 60 years.

NATIONAL ALFALFA

DEHYDRATING & MILLING CO.

General Sales Office

P.O. BOX 500 • SHAWNEE MISSION, KANSAS 66207

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SUPREME COURT, U. S.

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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-231

AMERICAN POLLUTION PREVENTION COMPANY, INC.,

Respondent,

vs.

NATIONAL ALFALFA DEHYDRATING AND MILLING COMPANY,

Petitioner.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Irving R. Brand
1800 Midwest Plaza
Minneapolis, Minnesota 55402
Counsel for Respondent

Charles Quaintance, Jr. and
Maslon, Kaplan, Edelman, Borman,
Brand & McNulty
1800 Midwest Plaza
Minneapolis, Minnesota 55402
Of Counsel

1975—Northwest Brief Printing Co., 501 Park Ave., Minneapolis 55415 338-5078

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-231

AMERICAN POLLUTION PREVENTION COMPANY, INC.,

Respondent,

vs.

NATIONAL ALFALFA DEHYDRATING AND MILLING COMPANY,

Petitioner.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

JURISDICTION

Petitioner asserts that "judgment" of the Minnesota Supreme Court was entered May 23, 1975. That is in fact the date the clerk of the Supreme Court of Minnesota filed the Opinion of that Court affirming the order of the trial court, denying petitioner's motion to dismiss for want of personal jurisdiction. The only "judgment" the Court has entered is that taxing appeal costs against petitioner. There has been no trial of this action and no decision on the merits. Thus, a question is presented, whether the order of the Supreme Court of Minnesota is a "[f]inal" judgment

or decree within the meaning of 28 U.S.C. §1257. We are prepared to agree with petitioner that it is. See *Mercantile National Bank at Dallas v. Langdeau,* 371 U.S. 555 (1963). Under Minnesota law, petitioner is now barred from raising the question of personal jurisdiction again in this litigation. The decision of the Supreme Court of Minnesota is a final judgment on that question.[1]

QUESTION PRESENTED

The question presented is whether the record discloses sufficient contacts between petitioner and the State of Minnesota to warrant exercise of personal jurisdiction by that State.

STATEMENT OF THE CASE

The record that forms the basis for the decision of the Minnesota courts to exercise personal jurisdiction over petitioner consists primarily of the uncontroverted affidavit of A. P. McMaster (Appendix H, A-29 - A-33). That affidavit establishes the following contacts between petitioner and the State of Minnesota.

Respondent is a Minneapolis-based company. Officials of petitioner twice came to Minneapolis to discuss the underlying transaction and other business relationships in 1973. In addition, numerous telephone conversations relating to

[1]Petitioner included with its brief copies of the original complaint and answer and counterclaim, but not of the amended complaint and answer and counterclaim. We have included the latter as an appendix to this brief. Comparison of the two answers establishes that petitioner asserted the defense of lack of personal jurisdiction in its original answer, but not in the second. This change, which occurred after the decision herein of the Supreme Court of Minnesota, suggests petitioner has waived the defense it seeks here to uphold. Thus, jurisdiction is doubtful, even though we agree the *Langdeau* doctrine otherwise applies.

the underlying transaction occurred between Minnesota and Nebraska in 1973 and 1974. In a related transaction, petitioner had already been paying respondent *in Minnesota* for the purchase of cattle. In the transaction now in dispute once again payment was "to be made in Minnesota."[2] (A-30)

Petitioner has had "close ties" (A-30) to the State of Minnesota for at least five years. Approximately ten percent of its sales occur in Minnesota. Petitioner is an agribusiness company, primarily in the feed industry; "it is virtually impossible to conduct a national feed business without having substantial Minnesota contacts." (A-31) A Minnesota corporation, closely affiliated with respondent, handled all export marketing for petitioner for two years and has discussed handling *all* marketing for petitioner.[3] That same Minnesota company has had numerous, repeated contacts with petitioner and was involved in a joint venture with it for approximately 18 months. Petitioner sends representatives "frequently" (A-31) to Minnesota to conduct its business there, sells directly to several Minnesota concerns, and advertises in Minnesota publications.

Aside from its attempts to minimize its Minnesota contacts, petitioner's Statement of Case is reasonably accurate. It does contain several factual assertions unsupported by the record (see, e.g., the last three sentences of the second

---

[2]While petitioner has never denied the affidavit's assertion, it now, for the first time, seeks to persuade a court that Nebraska law "requires" (Brief, p. 5) payment to be made in Nebraska. All the Nebraska statute in question deals with is the time and place for payment in the event the parties have not "otherwise agreed." (Brief, p. 3) Here, the parties did otherwise agree, and payment was "to be made in Minnesota."

[3]Page A-30 of petitioner's brief contains a typographical error in line 10, where the word "with" should read "all."

beginning paragraph of page 5 of petitioner's brief). It also misstates the nature of petitioner's counterclaim, suggesting that petitioner was harmed by an alleged failure to deliver in a timely fashion (p. 5). In fact, petitioner sought to avoid delivery and prevented earlier delivery; its counterclaim relates only to alleged failure to pay for feed at an earlier date (A-21 and A-23). Those earlier dealings between the parties are additional indication of petitioner's substantial Minnesota contacts.

ARGUMENT

Petitioner does not suggest any language in Rule 19 of the Supreme Court Rules that support its petition. It does not even assert that there are "special and important reasons" for the Court to grant its petition for review. This case is hardly one involving a federal question of substance not heretofore determined by this Court. Neither, we urge, can this case be said to be one that the Supreme Court of Minnesota has decided "in a way probably not in accord with applicable decisions of this court." Rule 19.1(b). Rather, this is only one of a large volume of cases applying well-recognized principles to specific factual contexts. See, e.g., *Hunt v. Nevada State Bank*, 172 N.W.2d 292 (Minn. 1969), cert. denied sub nom. *Burke v. Hunt*, 397 U.S. 1010 (1970).

As the Supreme Court of Minnesota expressed it, the unopposed affidavit of Mr. McMaster indicates a

> substantial and continuing business carried on by defendant in this state . . . . [Petitioner] has taken advantage of the protection of Minnesota law and could reasonably anticipate that its activities would have economic as well as legal consequence in Minnesota . . . .

> Finally, the dollar amount of the contract [approximately $1,600,000 (A-2)] and its potential economic impact indicate a substantial Minnesota interest in protecting the rights of plaintiff, whose main offices are here. (A-6-7)

Petitioner's Minnesota contacts established in this record (even though this record is not as developed as one would expect of a case presented to this Court for review) are substantially greater than the California contacts of defendant in *McGee v. International Life Insurance Co.*, 355 U.S. 220 (1957). Further, there are numerous activities, both in the underlying transaction (including specifically by way of counterclaim in this litigation) and in its national feed business,

> by which the defendant purposefully avails itself of the privilege of conducting activities within the former state, thus invoking the benefits and protections of its laws. *Hanson v. Denckla*, 357 U.S. 235, 253 (1958).

The agreement underlying this litigation involves a major interstate transaction, one that is an integral part of our "national economy." *McGee*, 355 U.S. at 222. Whenever a company that denominates itself "National" Alfalfa Dehydrating and Milling Company enters into such a million-dollar-plus transaction with a Minnesota company, it must expect significant economic and legal consequences in Minnesota. For the Minnesota courts to exercise personal jurisdiction under these circumstances does not, we submit, offend "traditional notions of fair play and substantial justice." *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945).

CONCLUSION

For the reasons set forth hereinabove, the petition should be denied.

Respectfully submitted,

IRVING R. BRAND
CHARLES QUAINTANCE, JR.
Maslon, Kaplan, Edelman, Borman,
Brand & McNulty
1800 Midwest Plaza
Minneapolis, Minnesota 55402
(612) 339-8015
Attorneys for Respondent

APPENDIX

STATE OF MINNESOTA
County of Hennepin

DISTRICT COURT
Fourth Judicial District

AMERICAN POLLUTION PREVENTION COMPANY, INC.,

Plaintiff,

vs.

NATIONAL ALFALFA DEHYDRATING AND MILLING COMPANY,

Defendant.

AMENDED COMPLAINT
File No. 703261

Plaintiff for its complaint against defendant states:

1. Plaintiff is a Delaware corporation, with its principal place of business in Minnesota.

2. Defendant is a Delaware corporation, with its principal place of business in Kansas, but does business in Minnesota within the meaning of the Minnesota Statutes conferring personal jurisdiction.

3. On or about January 4, 1974, defendant entered into an Amended Purchase Agreement in the form attached hereto as Exhibit A with plaintiff.

4. Despite and in violation of the terms of that Amended Purchase Agreement, defendant has failed and refused to purchase any of the cattle described therein.

5. As a result of defendant's failure and refusal, plaintiff has suffered direct damages in the amount of $743,694, plus interest.

6. At the time it entered into the Amended Purchase Agreement, defendant knew plaintiff was in a precarious financial condition. Both then and when it refused to perform pursuant to the agreement, defendant knew that its failure to perform would make it impossible for plaintiff to continue its banking relationships or to obtain financing from any source, would cause plaintiff to become insolvent or nearly so, and would thus cause substantial damage to plaintiff's business reputation.

7. Defendant's deliberate refusal to perform did in fact lead to the results described in paragraph 6, thus causing consequential damages to plaintiff in excess of $500,000.

WHEREFORE, plaintiff demands judgment against defendant in the amount of $1,243,694, plus interest, costs, disbursements, and attorneys' fees.

MASLON KAPLAN EDELMAN BORMAN BRAND & McNULTY
By /s/ CHARLES QUAINTANCE, JR.
1800 Midwest Plaza
Minneapolis, Minnesota 55402
(612) 339-8015
Attorneys for Plaintiff

EXHIBIT A

AMENDED PURCHASE AGREEMENT

THIS AGREEMENT, EXECUTED in Atkinson, Nebraska, this 4th day of January, 1974 by and between AMERICAN POLLUTION PREVENTION COMPANY, INC., (hereinafter referred to as "Seller"), and P & P FARM SUPPLY, a division of NATIONAL ALFALFA DEHYDRATING AND MILLING COMPANY, (hereinafter referred to as "Buyer"),

WITNESSETH:

WHEREAS, the parties hereto have heretofore entered into agreements relating to the purchase and sale of certain cattle, and,

WHEREAS, the parties are desirous of restating, with respect to the executory part of those prior agreements, certain of the terms and conditions of such agreements, as set forth hereinafter, and,

WHEREAS, Seller is the owner of 2300 Okie Feeder Steers, more or less, presently located at Onida, South Dakota and Norfolk, Nebraska, and 1500 head of Okie Feeder Steers, presently located at Norfolk, Nebraska, (hereinafter sometimes collectively referred to as the "Herd"), and is desirous of selling the Herd to Buyer, and Buyer is desirous of purchasing the Herd from Seller on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual agreements and undertakings set forth hereinafter, and notwithstanding the provisions of any earlier agreement, and upon the terms and conditions set forth below, the parties hereto agree as follows:

1. Seller shall sell to Buyer, 2300 Feeder Steers, more or less, grading at least 80% choice, said steers to be delivered, F.O.B., to Buyer's feedlot in Atkinson, Nebraska, delivery to commence on or about December 31, 1973, and to terminate on or about January 25, 1974. Buyer shall not be obligated to accept any animals weighing less than 650 pounds after shrink.

2. The purchase price to be paid by Buyer to Seller with respect to the Feeder Steers described in Paragraph 1, shall be $66.00 per hundredweight, off-truck-weight when shipped from Onida, and on-truck-weight less 3% when shipped from Norfolk, adjusted however as follows:

a. The aforesaid $66.00 per hundredweight is based upon average pay weight of 650 pounds per animal.

b. The purchase price per hundredweight shall decrease by $.02 per pound of average weight per animal in excesss of 650 pounds.

c. For every average pound less than the aforesaid 650-pound average per animal, the purchase price per hundredweight hereof shall increase $.02 per pound. (This adjustment being referred to in the industry as a $.02 slide, up or down).

3. The off-truck-weight referred to above shall be determined upon scales, the accuracy of which have been certified to by the State of Nebraska. Said Certification to be currently in effect.

4. Seller shall sell to Buyer, 1500 Okie Feeder Steers, more or less, grading at least 80% choice, said steers to be

delivered to Buyer's feedlot in Atkinson, Nebraska, said delivery to be completed on or about March 4, 1974. Buyer shall not be obligated to accept any animals weighing less than 650 pounds.

5. The purchase price to be paid by Buyer to Seller with respect to the Okie Feeder Steers described in Paragraph 4 hereof, shall be $69.00 per hundredweight, based on weight at the time of loading said steers at Norfolk, Nebraska, adjusted, however, as follows:

a. The aforesaid $69.00 per hundredweight is based upon average pay weight of 650 pounds per animal.

b. The purchase price per hundredweight shall decrease by $.02 per pound of average weight per animal in excess of 650 pounds.

c. For every average pound less than the aforesaid 650-pound average weight per animal, the purchase price per hundredweight shall increase $.02 per pound. (This adjustment being referred to in the industry as a $.02 slide, up or down).

d. The computed total purchase weight shall be decreased by 3% for shrink allowance to Buyer.

6. With respect to the portion of the Herd described in paragraph 1 above, Seller shall invoice Buyer per Buyer's scale weight tickets and subject to the contingency hereinafter stated, Buyer agrees to pay said invoice on or before January 25, 1974. With respect to that portion of the Herd described in Paragraph 4, Seller shall invoice buyer per the Fore Quarters Feed Lot, Norfolk, Nebraska,

scale weight tickets. Subject to the contingency hereinafter stated, Buyer agrees to pay said invoice upon receipt thereof. In the event that any of the payments due the Seller are not paid when due, the same shall draw interest at the rate of nine per centum per annum from due date until paid.

In the event that Buyer has been unable to sell or re-sell any portion of either of the lots of cattle herein to a Feeder or Investor for the purpose of feeding the same to market weights, prior to the due dates for payment by Buyer to Seller, the Buyer shall have the right to postpone the payments due to Seller, in which event the Buyer shall place said lots of cattle on feed for its own account, and shall furnish all the feed and care at its own expense to grow said cattle to market weights as fat cattle, and thereafter cause the same to be marketed in the joint names of Seller and Buyer. The proceeds of the sale of such cattle shall be first applied to the payment of any sums of money due to Seller from Buyer under this agreement, and any surplus thereafter shall be paid to Buyer. In the event the proceeds of the sale of such cattle are not sufficient to pay in full the amounts due to Seller from Buyer hereunder, Buyer shall immediately pay to Seller the amount of any balance remaining due and unpaid.

With regard to any lots of cattle for which payment has been postponed, Buyer shall have the right to pay for same or any portion thereof at any time, and to receive title to such parts as are paid for.

7. The parties hereto expressly agree that until such time as payment of the appropriate invoice has been made in full, by Buyer, title to the Herd of any part thereof, which are the subject of any unpaid invoice, remains en-

tirely with Seller and Seller shall have no obligation to present any bill of sale, brand release, or other document evidencing a transfer of title to the Herd, or the appropriate part thereof, until such payment has been received by Seller.

8. Buyer agrees that so long as any amount of any invoice, including interest thereon, if any, shall remain unpaid, Buyer shall agree to allow any field warehousing company, of Seller's choosing, to come upon Buyer's feedlots for the purpose of inspecting the Herd and issuing appropriate warehouse receipts thereon. Buyer shall use its best efforts and shall give its fullest cooperation to such warehousing company to assist them in the conduct of their employment. All costs and expenses to be paid to said field warehousing company shall be solely the obligation of the Seller herein.

9. If payment to Seller is postponed by Buyer, Buyer agrees that Buyer shall feed the Herd, commencing on delivery at its feedlot in accordance with the highest standards generally applied throughout the industry for finishing the Herd to slaughter weight, taking into consideration the type and weight make-up of the Herd. This obligation shall be solely at Buyer's expense. Buyer agrees that no lien, whether statutory or otherwise, shall be placed upon the Herd as a result of its obligations hereunder. Buyer further agrees to indemnify and hold Seller harmless against any loss, cost, or expense whatsoever, on account of any such lien.

10. Seller and Buyer agree that delivery of the 2300 cattle as referred to in Item 1, page 1, will be in accordance with the State of Nebraska Department of Agriculture let-

ter dated December 21, 1973 (copy of same attached hereto). Delivery of the 1500 cattle referred to in Item 4, page 1, will meet all conditions of the State of Nebraska Department of Agriculture prior to shipment. Clearance for shipment will be covered by a letter from said agency and will not adversely affect status of the present quarantine at P&P in Atkinson, and should P&P not be under quarantine, such delivery would not cause P&P to be placed back in quarantine.

11. Buyer shall be notified in advance of time of loading of any cattle identified to this agreement through the yards of facilities at Norfolk, Nebraska, and shall have the right to have a representative present to inspect said cattle and who shall have the right to reject any cattle not meeting the standards of this agreement or any obviously unhealthy cattle.

12. Buyer has previously purchased and paid for lots of cattle from Seller, other than the cattle described in this agreement, and has given Seller promissory notes, security agreements, and financing statements covering such purchases. Seller agrees to immediately return to Buyer such paid and cancelled promissory notes and security agreements and releases of such financing statements. Buyer may withhold payments due to Seller hereunder until such documents are furnished.

13. Nothing in this agreement contained shall be deemed or construed to place Buyer and Seller in the relationship of partners and at all times, their relationship shall be that of Buyer and Seller only.

14. This agreement shall be binding upon and inure

to the benefit of the parties hereto and their respective successors and assigns.

15. This agreement shall be construed according to the laws of Nebraska.

IN WITNESS WHEREOF, the parties have hereunto set their hands as of the day and year first above written.

AMERICAN POLLUTION PREVENTION COMPANY, INC.
By: /s/ A. P. McMASTER
Its Vice President
P & P FARM SUPPLY, a Division of National Alfalfa Dehydrating and Milling Company,
By: /s/ LOWELL CREACH
Its Vice Pres.

The undersigned does hereby assign all of its right, title and interest in the foregoing Agreement to I. S. Joseph Company.

AMERICAN POLLUTION PREVENTION COMPANY, INC.
By: /s/ DANA X. MARSHALL
Its Secretary, Treasurer

The undersigned does hereby waive the assignment to it of AMERICAN POLLUTION PREVENTION COMPANY, INC.'s right, title and interest in the foregoing Agreement.

I. S. JOSEPH COMPANY, INC.
By: /s/ ROBERT D. ANDERSON
Its Vice President

April 12, 1974.

A-10

DEPARTMENT OF AGRICULTURE

December 21, 1973

Mr. Lowell Creach
P&P Feedlot
P. O. Box 86
Atkinson, Nebraska 68713

Dear Mr. Creach:

This letter is in regard to our telephone conversation on December 21, 1973.

After consulting wihh Mr. Glen Kreuscher, Nebraska Director of Agriculture and Mr. Robert Ensz, Attorney for Nebraska Department of Agriculture, the decision was reached with Mr. Kreuscher and Mr. Ensz in agreement, that cattle could move from Fore-Quarters Feedlot at Norfolk to the P&P West Feedlot at Atkinson with the following stipulations required to meet quarantine requirements:

> All cattle in question are to be dipped in an approved dip under regulatory supervision. After the initial dipping, they are to be held in strict isolation from other cattle 10 to 14 days and receive the second supervised dipping at the end of this time. The first dipping is to be completed at the Fore-Quarters facilities and the second dipping may be at Fore Quarters or at P&P yards. By following this procedure, there will be no violation of the quarantines now in effect at either of the aforementioned premises.

Please inform this office previous to the time of dipping

so the necessary supervision can be given to charging the vat, etc.

Sincerely,

NEBRASKA BUREAU OF ANIMAL INDUSTRY
BURRELL D. SPAHR, DVM
Ass't. State Veterinarian

BDS:fs
cc. Clark Collins
Dr. R. Dougherty
Ron Krutzinger
Glenn Kreuscher

(Title of Cause.)

ANSWER AND COUNTERCLAIM TO AMENDED COMPLAINT

File No. 703261

Defendant, for its Answer to Plaintiff's Amended Complaint,

I.

Admits paragraphs 1 and 3 of Plaintiff's Amended Complaint and that portion of paragraph 2 alleging that defendant is a Delaware corporation with its principal place of business in the State of Kansas.

II.

Specifically denies that portion of paragraph 2, supra, alleging that defendant does business within Minnesota within the meaning of Minnesota Statutes conferring personal jurisdiction.

III.

Denies paragraphs 4, 5, 6 and 7 of Plaintiff's Amended Complaint.

IV.

Alleges further that the agreement specifically provided for delivery of the first 2,300 steers by January 25, 1974, but that plaintiff breached said agreement by failing and refusing to deliver any of said cattle within the time specified in the agreement which constitutes a material breach authorizing defendant to rescind the agreement.

V.

Alleges that paragraphs 6 and 7 of Plaintiff's Amended Complaint fail to state a cause of action upon which relief can be granted under the Uniform Commercial Code, the governing statute herein.

COUNTERCLAIM

For its Counterclaim against the plaintiff defendant states as follows:

I.

Plaintiff is indebted to the defendant in the sum of Nine Thousand Six Hundred Ninety Dollars and Six Cents ($9,690.06) in accordance with its contracts as set forth in Exhibit A attached hereto.

WHEREFORE the defendant prays for judgment against the plaintiff in the sum of Nine Thousand Six Hundred

Ninety Dollars and Six Cents ($9,690.06), together with its costs and disbursements herein.

/s/ GEORGE P. HOKE
Attorney for Defendant
1100 Northwestern Bank Building
Minneapolis, Minnesota 55402
332-6331/2